

STATE OF OREGON DEPARTMENT OF AGRICULTURE
Before the Director of the Department of Agriculture

In the Matter of the Imposition of)	NOTICE OF ASSESSMENT
Civil Penalty against Eric Silva and Paula Wolf)	OF CIVIL PENALTY
dba Sunset Canyon Jerseys)	
Oregon CAFO General Permit)	#1727098
Number 01-2016)	
Master Address No. 146914)	Sent via certified and regular mail.

BACKGROUND

Pursuant to its authority, the Oregon Department of Agriculture (“ODA” or “department”) has adopted General Permit No. 1-2016 for Confined Animal Feeding Operations (“CAFOs”). ORS 468B.035. ORS 468B.217. OAR 603-074-0014. Any person owning or operating a CAFO must seek coverage under the National Pollutant Discharge Elimination System (NPDES) Oregon CAFO General Permit Number 01-2016 (“CAFO Permit”) and must comply with the permit’s terms. ORS 468B.050. OAR 603-074-0014. ODA, as the administering agency, is charged with enforcing the terms of permitted operations so as to protect the public against animal wastes discharged into the waters of the state. ORS 468B.217. No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050. ORS 468B.025.

The department is authorized to assess civil penalties. ORS 468B.230. OAR 603-074-0070.

ODA hereby issues a Notice of Assessment of Civil Penalty in the amount of **\$36,280.00** to Eric Silva, dba Sunset Canyon Jerseys, for violation of special permit conditions: S2.A. Prohibitions and Discharge Limitations by allowing liquid manure to enter waters of the state that violated state water quality standards for E.coli. S2.B Production Area Limitations by allowing manure discharge from the production area to enter waters of the state resulting in a violation of state water quality standards for E.coli. S3.A. AWMP Implementation and Compliance by land applying liquid manure to saturated soil at a rate that exceeds the water holding capacity of the soil. S4.D, Reporting Requirements for failure to report unauthorized discharge to surface waters of the state.

The findings on which this determination is based and the criteria used to calculate the penalty are set out below.

FINDINGS OF FACT

1. Permittee Eric Silva and Paula Wolf operate a Medium dairy CAFO, Sunset Canyon Jersey’s located at 26755 Blaine Rd., in Beaver, Oregon, registered to the Oregon CAFO NPDES General Permit Number 01-2016 under Master Address No. 146914.
2. The CAFO General Permit #01-2016 contains the following special conditions:
S2.A, Prohibitions and Discharge Limitations, which reads, in part:
 1. The permit registrant must not discharge manure, litter or process wastewater to surface water and groundwater of the state except as allowed in S2.B and S2.C and provided these surface water discharges do not exceed the following effluent limits.
 - a. E.coli must not exceed zero organisms/100mL or quantitation limit of 2 Colony Forming Units/100mL or 0.0 most probable number/100mL;
 2. Compliance with the effluent limits above must be determined by laboratory test results of a representative grab sample of the discharge taken at the time of occurrence. If a grab sample is not taken, then the permit registrant is in violation of the effluent limits.

S2.B, Production Area Limitations, which reads, in part:

1. For all CAFOs (except swine, poultry, and veal large CAFOs, the construction of which commenced after April 14, 2003):

The permit registrant must not discharge manure, litter, or process wastewater to surface water of the state from the production area, except when:

- a. Rainfall events cause an overflow of waste management and storage facilities designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation for a 25-year, 24-hour rainfall event; and
- b. The production area is operated in accordance with the applicable inspection, maintenance, recordkeeping, and reporting requirements of this permit.

S3.A, Animal Waste Management Plan (AWMP) Implementation and Compliance, which reads in part:

2. The permit registrant's ODA-approved AWMP is incorporated into this permit by reference. The permit registrant must comply with all terms and conditions of its ODA-approved AWMP. Failure to comply with the ODA-approved AWMP constitutes a violation of the terms and conditions of this permit.

S4.D, Reporting Requirements, which reads, in part:

1. Reporting to ODA and Oregon Emergency Response System (OERS);
 - a. If a discharge to surface water or groundwater occurs that is not allowed by S2.B and S2.C, p.10, the permit registrant must notify ODA within 24 hours of the discharge. The permit registrant must submit a written report within five (5) days to ODA. The information to be submitted is listed in the monitoring requirements (See S4.A, p. 17) of this permit.
 - b. The permit registrant must notify ODA within 24 hours of becoming aware of any significant physical failure at any time of treatment works required under this permit.
 - c. The permit registrant must notify ODA with 24 hours of any permit noncompliance that may endanger health or the environment as described in G13.6, p.23.
2. Reporting of Monitoring Results of a prohibited effluent discharge;
 - a. The permit registrant must submit monitoring information for an effluent grab sample no later than one month from the date the sample was taken unless a different schedule is established by and administrative order as described in S4.E, p.20.
3. **On November 7, 2007**, ODA issued NON/POC #078590 to Sunset Canyon Jerseys for violations of S2.A, Discharge Limitations and S3.A, Animal Waste Management Plan (AWMP) Implementation and Compliance.
4. **On November 12, 2010**, ODA issued NON/POC #1021678 to Sunset Canyon Jerseys for violations of S2.A, Discharge Limitations, S2.B, Production Area Limitations, and S3.A, Animal Waste Management Plan (AWMP) Implementation and Compliance.
5. **On June 14, 2012**, ODA issued NON/POC #1222328 to Sunset Canyon Jerseys for violations of S2.A, Discharge Limitations, S2.E, Waste Storage Facilities, and S2.H, Proper Operation and Maintenance.
6. **On January 5, 2015**, ODA issued NON/POC #1524525 to Sunset Canyon Jerseys for violations of S4.C, Recordkeeping and Availability Requirements.
7. **On January 3, 2017**, ODA received a complaint alleging that manure was entering the Nestucca River as a result of manure application activities taking place on Sunset Canyon Jerseys land application area.

8. **On January 4, 2017**, ODA staff conducted Complaint Inspection #1726787 as a result of a complaint filed on January 3, 2017. The ODA representative contacted the Sunset Canyon Jerseys operator, Eric Silva and discussed the specifics of the complaint. ODA Staff proceeded to inspect the application area in fields Bell 3 and 4 where manure was applied on December 29, 2017. The cold weather made it difficult to determine the saturation status of the soil. In addition, ice had formed over areas of standing water in the field. ODA staff broke the ice in several locations to inspect the condition of the standing water under the ice. The water appeared turbid. The 3 drainage ditches adjacent to the application area were viewed and no evidence of surface discharge from the recent manure application was observed. The topography of the application area sloped toward the drainage ditches. ODA staff walked along the drainage ditches to their intersection with the Nestucca River and did not view any evidence that manure had discharged from the application area into the ditches or to the Nestucca River. The water flowing in the ditches was clear. ODA staff discussed the results of the inspection with Mr. Silva and reminded him to follow all CAFO Permit and AWMP conditions when making manure applications. The Complaint Inspection (#1726787) on January 4, 2017 resulted in a Water Quality Advisory (WQA) being issued.
9. **On February 15, 2017** at approximately 9:00 a.m. the Oregon Department of Agriculture (department) received a complaint stating that Sunset Canyon Jerseys had liquid manure running off their property and entering the Nestucca River.

At approximately 10:15 a.m. ODA staff arrived at the complainants residence to the view site where manure was allegedly entering the Nestucca River from property owned by Sunset Canyon Jerseys.

At approximately 10:45 a.m. ODA staff arrived at Sunset Canyon Jerseys located at 26755 Blaine Road in Beaver, Oregon and met with Mr. Eric Silva to discuss the complaint specifics. ODA staff described to Mr. Silva that liquid manure was being applied with a traveler to field HB 6 at the time of arrival. Mr. Silva stated that he had instructed an employee to turn the manure pump "off" 2 hours prior. Mr. Silva immediately turned the manure pump off. Mr. Silva stated that liquid manure was applied to fields HB 2-6 on February 13 and 14, 2017 and to fields Bell 1-4 on February 11 and 12, 2017. ODA staff and Mr. Silva proceeded to field HB 6 to conduct a complaint inspection. ODA staff viewed liquid manure flowing from the application area in field HB 6 north towards field HB 5. Further investigation found liquid manure flowing north (towards the Nestucca River) from recent manure applications made to fields HB 2, 5 and 6 into fields HB 3 and 4. Three ponds of what appeared to be liquid manure comingled with storm water had formed in fields HB 4 and HB 3. In addition, liquid manure was also observed flowing to the northwest corner of field HB 3, entering into a ditch, and flowing into the Nestucca River from multiple locations. Six water samples were collected from the bank of the Nestucca River and in the river. Mr. Silva was contacted to inform him of the manure entering the Nestucca River and to instruct him to take all means necessary to stop the discharge. He used his loader tractor to build a dirt berm in field HB3.

ODA staff continued the inspection and viewed liquid manure leaving the application area in Field HB 5 and then flowing east towards field Bell 6. The lane between HB 5 and Bell 6 had liquid manure flowing north toward a ditch that enters the Nestucca River adjacent to the complainant's property. Liquid manure was viewed entering the ditch from the lane next to a culvert that exists below the lane. Three water samples were collected from this area. Mr. Silva was contacted to inform him that liquid manure was entering the Nestucca River from a second location and to instruct him to take all means necessary to stop the discharge at that location. He used his loader tractor to make a dirt berm. Three smaller ditches combine to form a larger, single ditch that flows directly into the Nestucca River. A water sample was collected from each of the three smaller ditches prior to the liquid manure application area. The final sample was collected upstream in the Nestucca River prior to manure entering the river from the larger, single ditch.

As a result of the complaint inspection, Mr. Silva was instructed to not apply any manure until receiving written permission from ODA. Mr. Silva was also instructed to use all possible, legal methods of manure management or export of manure so that land application of manure at the fields listed in this inspection finding could be stopped until significantly dryer weather and crop growth had occurred. Mr Silva was also instructed to stop all discharges by any legal means possible, and to follow all permit conditions.

A total of 15 water samples were collected and delivered to the Oregon Department of Agriculture Laboratory in Portland, Oregon for analysis (See 02/05/17 Sample Map).

The complaint inspection of Sunset Canyon Jersey's on February 15, 2017 resulted in the Oregon Department of Agriculture issuing a Final Inspection Results Pending (FIRP) water sample results for case #1727091.

10. **On February 16, 2017**, ODA staff conducted a Follow-Up inspection #1723045 with Mr. Silva. The application area in field's HB 2-6 and Bell 1-4 were observed. The appearance of the water flowing off of the fields from the application area ranged from slightly turbid to clear. No manure had been applied since the Complaint Inspection on the previous day. Mr. Silva was again instructed to not apply any manure, manage all manure storage facility storage levels to prevent overflow, notify the department if any storage is approaching capacity, and follow all permit conditions. The ODA representative viewed 2 below ground liquid manure tanks and each had liquid manure levels that were 4-5 feet from the top or about 50 to 60% full. The liquid manure level in the above ground liquid manure tank was estimated to be 4 feet from the top or about 70% full. The department received notification of Mr. Silva reporting the discharge of February 15 to OERS. ODA staff inspected all of the fields and sample location that were viewed/sampled during the February 15 complaint inspection. Water samples were collected from 9 of the previously sampled 15-sample sites (See Attached 02/16/2017) sample map. The follow-up inspection of Sunset Canyon Jersey's on February 16, 2017 resulted in the Oregon Department of Agriculture issuing a Final Inspection Results Pending (FIRP) water sample results for case #1723045.
11. **On February 17, 2017**, Two ODA representatives conducted a Follow-Up inspection #1727092. The representatives met with Mr. Silva and discussed the inspection and sampling that had occurred on the two previous days. The production area was inspected, specifically the areas in close proximity to the liquid manure storage facilities. The representatives found evidence that liquid manure appeared to have flowed out of the western most below ground liquid tank and down the bank toward Boulder creek. The liquid manure overflow was not occurring at the time of the inspection. In addition, an accumulation of uncovered, uncontained solid manure was observed adjacent to the solid manure storage facility on the driveway. This area drains along the east side of the above ground liquid manure tank to a low spot and then enters a drainage ditch which flows to Boulder Creek which flows to the Nestucca River. Three water samples were collected from this area, down stream of the manure entry point at the culvert prior to the cow lane, upstream prior to any visual influence from the facility, and from the drainage from the area adjacent to the area where accumulated manure solids were present on the driveway. (See Attached 02/16/2017 sample map). The follow-up inspection of Sunset Canyon Jersey's on February 17, 2017, resulted in the Oregon Department of Agriculture issuing a Final Inspection Results Pending (FIRP) water sample results for case #1727092.
12. **On February 17, 2017**, the department received sample results for Compliant Inspection #1726787 conducted on February 15, 2017. The sample results confirmed violations of water quality standards (See Attached 02/15/2017 Sample Map).
13. **On February 22, 2017**, the department received sample results for Follow-up Inspection #1723045 conducted on February 16, 2017. The sample results confirmed violations water quality standards (See Attached 02/16/2017 Sample Map).

14. **On February 23, 2017**, the department received sample results for Follow-up Inspection #1727092 conducted on February 17, 2017. The sample results confirmed violations water quality standards (See Attached 02/17/2017 Sample Map).
15. **On March 7, 2017**, ODA staff conducted a Follow-Up inspection #1726297. The approximant level of liquid manure in the AGLMT was 6-8 inches from the top and the level in the western most BGLMT was 2 feet from the top. Mr. Silva was planning on applying liquid manure to the Bell fields, but after observing the fields with ODA staff, it was determined that the fields were saturated. As a result, Mr. Silva immediately made arrangements to export liquid manure to another farm to manage the level of his liquid manure storage facilities. Mr. Silva was reminded to follow all permit conditions and his department approved AWP. At the time of inspection, green tinted water was observed coming out of the culvert located southeast of the barn that houses the milking parlor on north end of Blankenship road. The water from the culvert continued down the hill to a ditch located between the milking parlor barn and the AGLMT. The ditch flows to Boulder Creek and then to the Nestucca River. Three water samples were collected from this area (See 3/07/2017 Sample Map). The follow-up inspection of Sunset Canyon Jersey's on March 7, 2017, resulted in the Oregon Department of Agriculture issuing a Final Inspection Results Pending (FIRP) water sample results for case #1726297.
16. **On March 8, 2017**, ODA staff conducted a follow-up inspection #1725319 with Mr. Silva to gather information regarding his liquid manure export activity. Mr. Silva stated that 6 loads had been hauled, but due to the saturated soil, the export activities were stopped. The application area was observed by ODA staff to verify the export activities. The liquid manure level in the AGLMT was estimated to be 10 inches from the top.
17. **On March 9, 2017**, the department received sample results for Follow-up Inspection #1726297 conducted on March 7, 2017. The sample results confirmed violations water quality standards (See Attached 3/7/2017 Sample Map).

ULTIMATE FINDINGS OF FACT

1. Permittee Eric Silva and Paula Wolf operate a Medium dairy CAFO, Sunset Canyon Jersey's, located at 26755 Blaine Road, in Beaver, Oregon, registered to the Oregon CAFO NPDES General Permit Number 01-2016 under Master Address No. 146914.
2. **On November 7, 2007**, ODA issued NON/POC #078590 for violations of S2.A, Discharge Limitations and S3.A, Animal Waste Management Plan (AWMP) Implementation and Compliance.
3. **On November 12, 2010**, ODA issued NON/POC #1021678 for violations of S2.A, Discharge Limitations, S2.B, Production Area Limitations, and S3.A, Animal Waste Management Plan (AWMP) Implementation and Compliance.
4. **On June 14, 2012**, ODA issued NON/POC #1222328 for violations of S2.A, Discharge Limitations, S2.E, Waste Storage Facilities, and S2.H, Proper Operation and Maintenance.
5. **On January 5, 2015**, ODA issued NON/POC #1524525 for violations of S4.C, Recordkeeping and Availability Requirements.
6. **On February 15, 2017**, permittee failed to properly operate, maintain and monitor liquid manure application activities resulting in an unauthorized discharge of the land-applied liquid manure that entered into the Nestucca River and violated state water quality standards.

7. **On February 16, 2017**, permittee failed to properly operate, maintain and monitor liquid manure application activities resulting in an unauthorized discharge of the land-applied liquid manure that entered into the Nestucca River and violated state water quality standards.
8. **On February 17, 2017**, permittee failed to properly operate, maintain and monitor production area activities resulting in manure entering a ditch that flows to Boulder Creek and then the Nestucca River that violated state water quality standards.
9. **On March 7, 2017**, permittee failed to properly operate, maintain and monitor production area activities resulting in manure entering a ditch that flows to Boulder Creek and then the Nestucca River that violated state water quality standards.

CONCLUSIONS OF LAW

1. **On February 15, 2017**, the permittee violated the CAFO NPDES General Permit No. 01-2016's Special conditions: S2.A, Prohibitions and Discharge Limitations by allowing liquid manure to enter waters of the state that violated state water quality standards for E.coli. S3.A, AWMP Implementation and Compliance by land applying liquid manure at a rate that exceeds the water holding capacity of the soil. S4.D, and Reporting Requirements for failure to report unauthorized discharge to surface waters of the state, as evidenced in Findings of Fact paragraphs #8 and #12.
3. **On February 16, 2017**, the permittee violated the CAFO NPDES General Permit No. 01-2016's Special condition S2.A. Prohibitions and Discharge Limitations by allowing liquid manure to enter waters of the state that violated state water quality standards for E.coli. as evidenced in Findings of Fact paragraphs #9 and #13.
4. **On February 17, 2017**, the permittee violated the CAFO NPDES General Permit No. 01-2016's Special conditions: S2.A. Prohibitions and Discharge Limitations by allowing liquid manure to enter waters of the state that violated state water quality standards for E.coli. S2.B Production Area Limitations by allowing manure discharge from the production area to enter waters of the state resulting in violated state water quality standards for E.coli. as evidenced in Findings of Fact paragraphs #11 and #14.
5. **On March 7, 2017**, the permittee violated the CAFO NPDES General Permit No. 01-2016's Special conditions: S2.A. Prohibitions and Discharge Limitations by allowing liquid manure to enter waters of the state that violated state water quality standards for E.coli. S2.B Production Area Limitations by allowing manure discharge from the production area to enter waters of the state resulting in violated state water quality standards for E.coli. as evidenced in Findings of Fact paragraphs #15 and #17.
6. The department is authorized to assess civil penalties. ORS 468B.230. OAR 603-074-0070.

PENALTY CALCULATION

The penalty calculation is \$36,280.00. The penalty is determined using the criteria in OAR 603-074-0070 and OAR 603-074-0080.

OAR 603-074-0070(1) provides that "the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under ORS Chapter 468 or 468B."

Pursuant to OAR 603-074-0070(1) and OAR 603-074-0080(4), the department used the following formula to calculate the civil penalty:

$$B + [(1 \times B) (P + H + R)] = \text{Penalty Amount}$$

VIOLATION #1

Penalty calculation for violation number 1 that occurred on February 15, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S2.A, Prohibitions and Discharge Limitations and is documented in Findings of Fact paragraphs #3-#5, #8, and #12.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$5,000.00 for Category I (Major) repeat violation, and High gravity of effect. OAR 603-074-0070 (4)(a)(C) and 0070 (5)(a).
2. P, the past occurrence, is 4, for having 2 past occurrences of Category I violations as evidenced in NON/POC's #1021678 and #078590. OAR 603-074-0080 (4)(b)(E)
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (4)(c)(C).
4. R, the preventability of the violation, is 7, the person's actions were flagrant or reckless, OAR 603-074-0080 (4)(d)(F).

$$\$5,000 + [(.1 \times \$5,000) (4 + 1 + 7)] = \$11,000.00$$

\$10,000.00 civil penalties for a repeat occurrence may not exceed \$10,000.00 per violation. OAR 603-074-0070(1)(b).

VIOLATION #2

Penalty calculation for violation number 2 that occurred on February 15, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S3.A, Animal Waste Management Plan (AWMP) Implementation and Compliance and is documented in Findings of Fact paragraphs #3-#5, #8, and #12.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$400.00 for Category III (Minor) repeat violation, and High gravity of effect. OAR 603-074-0070 (4)(c)(A) and 0070 (5)(a).
2. P, the past occurrence, is 3, for having a past occurrence of a Category I violation as evidenced in NON/POC #1021678. OAR 603-074-0080 (4)(b)(D).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (4)(c)(C).
4. R, the preventability of the violation, is 4, the person's actions determined to be in violation were reasonably avoidable, OAR 603-074-0080 (4)(d)(E).

$$\$400 + [(.1 \times \$400) (3 + 1 + 4)] = \$720.00$$

VIOLATION #3

Penalty calculation for violation number 3, this violation occurred on February 15, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S4.D, Reporting Requirements and is documented in Findings of Fact paragraphs #3-#5, #8 and #12.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$5,000.00 for Category I (Major) repeat violation, and High gravity of effect. OAR 603-074-0070 (4)(a)(E) and 0070 (5)(a).
2. P, the past occurrence, is 3 for having a past occurrence of a Category I violation, as evidenced in NON/POC #1524525. OAR 603-074-0080 (4)(b)(D).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (4)(c)(C).
4. R, the preventability of the violation, is 4, the person's actions determined to be in violation were reasonably avoidable, OAR 603-074-0080 (4)(d)(E).

$$\$5,000.00 + [(.1 \times 5,000) (3 + 1 + 4)] = \$9,000.00$$

VIOLATION #4

Penalty calculation for violation number 4, this violation occurred on February 16, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S2.A, Prohibitions and Discharge Limitations and is documented in Findings of Fact paragraphs #3-#5, #9 and #13.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$2,400.00 for Category I (Major) repeat violation, and Medium gravity of effect. OAR 603-074-0070 (4)(a)(C) and 0070 (5)(b).
2. P, the past occurrence, is 4, for having 2 past occurrences of Category I violations as evidenced in NON/POC's #1021678 and #078590. OAR 603-074-0080 (4)(b)(E).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (4)(c)(C).
4. R, the preventability of the violation, is 4, the person's actions determined to be in violation were reasonably avoidable, OAR 603-074-0080 (4)(d)(E).

$$\$2,400.00 + [(.1 \times 2,400) (4 + 1 + 4)] = \$4,560.00$$

VIOLATION #5

Penalty calculation for violation number 5, this violation occurred on February 17, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S2.A, Prohibitions and Discharge Limitations and is documented in Findings of Fact paragraphs #3-#5, #11 and #14.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$2,400.00 for Category I (Major) repeat violation, and Medium gravity of effect. OAR 603-074-0070 (4)(a)(C) and 0070 (5)(b).
2. P, the past occurrence, is 4, for having 2 past occurrences of Category I violations as evidenced in NON/POC's #1021678 and #078590. OAR 603-074-0080 (b)(E).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (c)(C).

4. R, the preventability of the violation, is 4, the person's actions determined to be in violation were reasonably avoidable, OAR 603-074-0080 (d)(E).

$$\$2,400.00 + [(.1 \times 2,400) (4 + 1 + 4)] = \$4,560.00$$

VIOLATION #6

Penalty calculation for violation number 6, this violation occurred on February 17, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S2.B, Production Area Limitations and is documented in Findings of Fact paragraphs #3-#5, #11 and #14.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$800.00 for Category II (Moderate) repeat violation, and Medium gravity of effect. OAR 603-074-0070 (4)(b)(C) and 0070 (5)(b).
2. P, the past occurrence, is 3, for a past Category I violation, as evidenced in NON/POC #1021678. OAR 603-074-0080 (4)(b)(E).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (4)(c)(C).
4. R, the preventability of the violation, is 4, the person's actions determined to be in violation were reasonably avoidable, OAR 603-074-0080 (4)(d)(E).

$$\$800.00 + [(.1 \times 800) (3 + 1 + 4)] = \$1,440.00$$

VIOLATION #7

Penalty calculation for violation number 5, this violation occurred on March 7, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S2.A, Prohibitions and Discharge Limitations and is documented in Findings of Fact paragraphs #3-#5, #15 and #17.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$2,400.00 for Category I (Major) repeat violation, and Medium gravity of effect. OAR 603-074-0070 (4)(a)(C) and 0070 (5)(b).
2. P, the past occurrence, is 4, for having 2 past occurrences of Category I violations as evidenced in NON/POC's #1021678 and #078590. OAR 603-074-0080 (b)(E).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (c)(C).
4. R, the preventability of the violation, is 4, the person's actions determined to be in violation were reasonably avoidable, OAR 603-074-0080 (d)(E).

$$\$2,400.00 + [(.1 \times 2,400) (4 + 1 + 4)] = \$4,560.00$$

VIOLATION #8

Penalty calculation for violation number 6, this violation occurred on March 7, 2017, at 26755 Blaine Rd. in Beaver, Oregon, for violating special condition S2.B, Production Area Limitations and is documented in Findings of Fact paragraphs #3-#5, #15 and #17.

$$B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$$

1. B, the base penalty, is \$800.00 for Category II (Moderate) repeat violation, and Medium gravity of effect. OAR 603-074-0070 (4)(b)(C) and 0070 (5)(b).
2. P, the past occurrence, is 3, for a past Category I violation, as evidenced in NON/POC #1021678. OAR 603-074-0080 (4)(b)(E).
3. H, the history of the person taking all feasible steps to correct the violation, is 1, the person took some, but not all feasible steps to correct prior violations, OAR 603-074-0080 (4)(c)(C).
4. R, the preventability of the violation, is 4, the person's actions determined to be in violation were reasonably avoidable, OAR 603-074-0080 (4)(d)(E).

$$\$800.00 + [(.1 \times 800) (3 + 1 + 4)] = \$1,440.00$$

Total Penalty

**Violation #1 + Violation #2 + Violation #3 + Violation #4 + Violation #5 + Violation #6 +
Violation #7 + Violation #8 = Total Penalty**

$$\$10,000.00 + \$720 + \$9,000.00 + \$4,560.00 + 4,560.00 + \$1,440 + \$4,560 + \$1,440 = \$36,280$$

RIGHT TO A HEARING

You have the right to a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183) on the matters in this Notice of Assessment of Civil Penalty. ORS 183.745. ORS 468B.230. The request for a hearing must be made in writing and filed with the Oregon Department of Agriculture (department) within 20 days from the date of receipt of this Notice. OAR 603-074-0050. A request for hearing must be in writing and directed to the attention of:

Ray Jaendl, Director
Natural Resources and Pesticides
Oregon Department of Agriculture
635 Capitol Street NE
Salem, OR 97301-2532

You may be represented by legal counsel. Legal aid organizations may be able to assist you if you have limited financial resources. If you make a timely request for a hearing, you will be notified of the time and date of such hearing. The rights and procedures in a contested case will be provided to you upon receipt of a request for a formal contested case hearing.

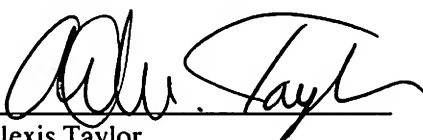
NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-7500, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

FINAL ORDER

If you fail to request a hearing within 20 days of service of this notice, withdraw a hearing request, notify the department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, this order shall become final. If this order becomes a Final Order by default, the department designates its file on this matter as the record. A civil penalty imposed by the order will become due and payable 10 days after the order becomes final by operation of law or on appeal. ORS 183.745(2). Your check or money order should be made payable to the Oregon Department of Agriculture and sent to:

Oregon Department of Agriculture
ATTN: CAFO Program
635 Capitol Street NE
Salem, Oregon 97301-2532

Dated this 5 day of Apr. 1, 2017.



Alexis Taylor
Director, Oregon Department of Agriculture

RIGHT TO JUDICIAL REVIEW OF FINAL ORDER

You have the right to appeal a Final Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order becomes final.

cc: Armando Macias, Area Livestock Water Quality Specialist
Ben Krahn, Area Livestock Water Quality Specialist
William Matthews, CAFO Program Manager

Attachments:

- Sample Results (2/15/17, 2/16/17, 2/17/2017, 03/07/2017)
- Chain of Custody (2/15/17, 2/16/17, 2/17/2017, 03/07/2017)
- Sample Maps (2/15/17, 2/16/17, 2/17/2017, 03/07/2017)
- 02/15/17 trip report